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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

HARDY AND CAREY, L.L.P.  
ATTORNEYS AT LAW  
111 VETERANS BOULEVARD  
METAIRIE, LOUISIANA 70005  
TELEPHONE: 504-830-4646  
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March 30, 1995

1930.003

**BY HAND**

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

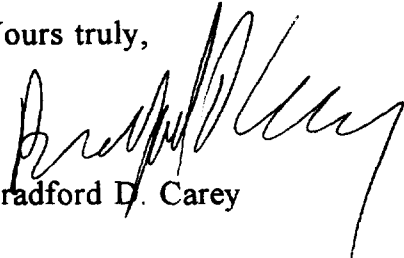
RE: Amendment of Section 73.202(b)  
Table of Allotments - FM Broadcast Stations  
Tompkinsville, Kentucky  
No.: RM-8563; MM Docket No.: 95-8

Dear Mr. Caton:

Enclosed please find the original and four (4) copies of a Statement in Lieu of Reply Comments of Falcon Broadcasters in Support of Proposed Amendment for filing with the Commission in connection with the above-captioned proceeding.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,

  
Bradford D. Carey

BDC/mv  
Enclosures

cc: John A. Karousos - By Hand  
Chief, Allocations Branch, FCC

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MAR 30 1995

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	RM-8563
Table of Allotments,	)	
FM Broadcast Stations	)	MM Docket No.
Tompkinsville, Kentucky	)	95-8

DOCKET FILE COPY ORIGINAL

To: Chief, Allocations Branch  
Policy & Rules Division, Mass Media Bureau

**STATEMENT IN LIEU OF**  
**REPLY COMMENTS OF FALCON BROADCASTERS**  
**IN SUPPORT OF PROPOSED ALLOTMENT**

Falcon Broadcasters, by its Attorneys, hereby files this Statement in Lieu of Reply Comments in Support of Proposed Allotment. Falcon Broadcasters is the proponent of the allotment proposed and the Petitioner in this proceeding. Pursuant to Section 1.401 et seq. of the Commission's Rules, Falcon Broadcasters would be entitled to file Reply Comments in response to any counter-proposals to (or comments contrary to) the proposed amendment of Section 73.202(b) of the Table of FM Allotments to add Channel 274A for use at Tompkinsville, Kentucky.

The deadline for the filing of Comments in this proceeding was March 16, 1995. This Statement is being filed approximately two weeks after the deadline for the filing of Comments. Under the Commission's Rules, any party filing Comments or counterproposals had an affirmative obligation to timely serve a copy on the Undersigned, Falcon Broadcaster's Counsel of Record. To date, none have been received.

Furthermore, a review of the Commission's "history card" for this proceeding, MM Docket No. 95-8, discloses that the only documents filed in this proceeding are the *Petition for Rulemaking* filed on behalf of Falcon Broadcasters; the *Notice of Proposed Rulemaking* ("NPRM") issued by the Commission; and, the *Comments* in support of the proposal timely filed by the Undersigned on behalf of Falcon Broadcasters. A copy of the history card is annexed hereto, as Exhibit One.

For the Commission's convenience, copies of the NPRM and Falcon's timely filed *Comments* on are annexed hereto as Exhibits Two-A and Two-B respectively.

In its *Comments*, Falcon restated its prior showings and commitments and incorporated them by reference<sup>1</sup>. Furthermore, Falcon Broadcasters demonstrated that Channel 274A may be added at Tompkinsville, Kentucky, in accordance with the Commission's minimum distance separation requirements as specified in Section 73.207 of the Commission's Rules.

The proposed service is in the public interest because it will provide a second full-time local FM service to Tompkinsville. As shown in the Engineering Statement annexed to the *Petition for Rulemaking*, the proposal is fully consistent with the Commission's Rules including Section 73.207 and 73.315.

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<sup>1</sup>Falcon Broadcasters again restates its commitment to seek a construction permit for facilities on the channel if the proposed allotment is granted. If granted a permit it will expeditiously construct, and then will operate, a station on the channel.

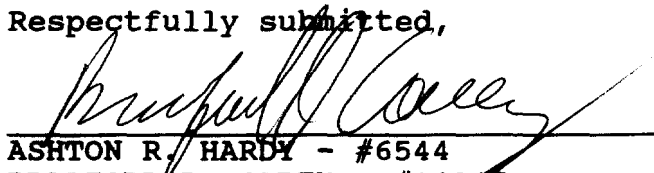
Tompkinsville, population 4366,<sup>2</sup> is presently the community of license of stations WTKY-AM and WTKY-FM. It is clear, therefore, that it qualifies as a licensable community under Commission standards. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982).

**CONCLUSION:**

**THIS ALLOTMENT MAY BE IMMEDIATELY GRANTED**

Falcon Broadcasters respectfully submits that it is appropriate for Commission now to amend its FM Table of Allotments to add Channel 274A at Tompkinsville, Kentucky. All appropriate proceedings have been held. The petitioner has made all of the required showings. No contrary comments or counter-proposals were filed. The allotment may, and Falcon respectfully submits should, be expeditiously **GRANTED** and a window **OPENED** for the filing of applications.

Respectfully submitted,



ASHTON R. HARDY - #6544  
BRADFORD D. CAREY - #14947  
Hardy & Carey, L.L.P.  
111 Veterans Memorial Blvd.,  
Suite 255  
Metairie, Louisiana 70005  
(504) 830-4646

Attorneys for Falcon Broadcasters

Dated: March 29, 1995

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<sup>2</sup> See 1992 Road Atlas, American Automobile Association.

**EXHIBIT ONE**

\*\*\* DKT/RM: 95-8 \*\*\* ::::

02/01/95 DOC TYPE: COMMENT  
APPL : FALCON BROADCASTERS ATT:  
LAW FIRM: HARDY AND CAREY, L.L.P. CAREY, BRADFORD D.  
RELEASE/DENIED: FCC/DA#:  
RM#: RM-8563 VIEWING STATUS: 0 EXPARTE:

01/11/95 DOC TYPE: NPRM  
APPL : POLICY AND RULES DIVISION ATT:  
LAW FIRM: FCC MCDONALD, SHARON P.  
RELEASE/DENIED: 01/23/95 FCC/DA#: DA 95-33  
RM#: RM-8563 VIEWING STATUS: 0 EXPARTE:

12/02/94 DOC TYPE: PET RM  
APPL : FALCON BROADCASTERS ATT: TOMPKINSVILLE, KY  
LAW FIRM: HARDY AND CAREY, L.L.P. CAREY, BRADFORD D.  
RELEASE/DENIED: FCC/DA#:  
RM#: RM-8563 VIEWING STATUS: 0 EXPARTE:

**EXHIBIT TWO-A**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 95-8

In the Matter of

Amendment of Section 73.202(b) RM-8563  
Table of Allotments,  
FM Broadcast Stations.  
(Tompkinsville, Kentucky)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 11, 1995; Released: January 23, 1995

Comment Date: March 16, 1995

Reply Comment Date: March 31, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Falcon Broadcasters ("petitioner") requesting the allotment of Channel 274A at Tompkinsville, Kentucky, as the community's second local FM transmission service. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration since it could provide the community with its second local FM transmission service. An engineering analysis has determined that Channel 274A can be allotted to Tompkinsville, Kentucky, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) southeast to avoid short-spacings to vacant Channel 273C3, Crossville, Tennessee, Station WYCO(FM), Channel 275C1, Shelbyville, Tennessee, and Station WTKY(FM), Channel 221A, Tompkinsville, Kentucky.<sup>1</sup>

3. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Tompkinsville, Kentucky	221A	221A, 274A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 16, 1995, and reply comments on or before March 31, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Bradford D. Carey, Esq.  
Hardy & Carey, L.L.P.  
111 Veterans Memorial Blvd.  
Suite 255  
Metairie, Louisiana 70005  
(Counsel for Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

<sup>1</sup> The coordinates for Channel 274A at Tompkinsville are

North Latitude 36-39-55 and West Longitude 85-35-51.



## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

**EXHIBIT TWO-B**

RECEIVED

HARDY AND CAREY, L.L.P.

ATTORNEYS AT LAW

111 VETERANS BOULEVARD  
METairie, LOUISIANA 70005

TELEPHONE: 504-836-4646  
TELEFAX: 504-830-4639

FEB 1 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

RETURN COPY  
(FOR DATE-STAMP AND RETURN)

February 1, 1995

1930.003

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: Amendment of Section 73.202(b)  
Table of Allotments - FM Broadcast Stations  
Tompkinsville, Kentucky  
No.: RM-8563; MM Docket No.: 95-8

Dear Mr. Caton:

Enclosed please find the original and four (4) copies of Comments of Falcon Broadcasters in Support of Proposed Allotment for filing with the Commission in connection with the above-captioned proceeding.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,

  
Bradford D. Carey

BDC/mv  
Enclosures

cc: John A. Karousos - By Hand  
Chief, Allocations Branch, FCC

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	RM-8563
Table of Allotments,	)	
FM Broadcast Stations	)	MM Docket No.
Tompkinsville, Kentucky	)	95-8

To: Chief, Allocations Branch  
Policy & Rules Division, Mass Media Bureau

**COMMENTS OF FALCON BROADCASTERS**  
**IN SUPPORT OF PROPOSED ALLOTMENT**

Falcon Broadcasters, by its Attorneys and pursuant to Section 1.401 et seq. of the Commission's Rules, hereby files its Comments in response to the Commission's proposal to amend Section 73.202(b) of the Table of FM Allotments, to add Channel 274A for use at Tompkinsville, Kentucky. In support whereof, the following is shown:

Falcon Broadcasters is the proponent of the allotment proposed and the Petitioner in this proceeding. Falcon restates its prior showings and commitments and incorporates them herein by reference.

Frequency studies undertaken on behalf of Falcon Broadcasters demonstrate that Channel 274A may be added at Tompkinsville, Kentucky, in accordance with the Commission's minimum distance separation requirements as specified in Section 73.207

of the Commission's Rules. See Engineering Statement, attached to the Petition for Rulemaking as Exhibit 1. For purposes of its study, Falcon Broadcasters located an area within which transmitters may be located for city-grade service at Tompkinsville.

The proposed service is in the public interest because it will provide a second full-time local FM service to Tompkinsville. As shown in the Engineering Statement annexed to the Petition for Rulemaking, the proposal is fully consistent with the Commission's Rules including Section 73.207 and 73.315.

Tompkinsville, population 4366,<sup>1</sup> is presently the community of license of stations WTKY-AM and WTKY-FM. It is clear, therefore, that it qualifies as a licensable community under Commission standards. Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 101 (1982).

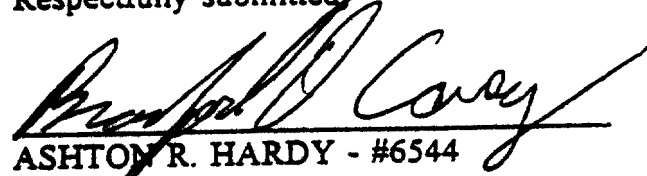
Falcon Broadcasters hereby restates its commitment to file an application for a construction permit to build an FM station at Tompkinsville upon adoption of its proposal by the Commission. If granted a construction permit, Falcon Broadcasters will promptly construct and operate a station on the channel.

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<sup>1</sup> See 1992 Road Atlas, American Automobile Association.

IN VIEW OF THE ABOVE, Falcon Broadcasters respectfully requests that the Commission amend the FM Table of Allotments to add Channel 274A at Tompkinsville, Kentucky.

Respectfully submitted,



ASHTON R. HARDY - #6544

BRADFORD D. CAREY - #14947

Hardy & Carey, L.L.P.

111 Veterans Memorial Blvd., Suite 255

Metairie, Louisiana 70005

(504) 830-4646

Attorneys for Falcon Broadcasters

Dated: January 28, 1995

at:1930.0031950127.com